

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
International Settlements Policy	)	IB Docket No. 02-324
Reform	)	
	)	
International Settlement Rates	)	IB Docket No. 96-261

**REPLY COMMENTS OF PLDT**

The Philippine Long Distance Telephone Company ("PLDT"), by its attorneys, hereby replies to comments filed in the above-captioned proceeding. In particular, PLDT responds to assertions by International Access Inc. d/b/a Access International ("Access") that the U.S.-Philippines route is not benchmark-compliant and should not be removed from the International Settlements Policy ("ISP").<sup>1</sup>

As shown below, Access' comments do not demonstrate that the U.S.-Philippines route is not benchmark-compliant or that there is any other basis for concluding that the ISP should apply to this route. Access does not even assert that Philippine carriers are charging rates in excess of the Commission's benchmarks, but offers the unfounded speculation that current interim rate

---

<sup>1</sup> *International Settlements Policy Reform; International Settlement Rates*, Comments of International Access Inc. d/b/a Access International, IB Docket Nos. 02-324 & 96-261 (filed June 28, 2004) ("Access Comments").

agreements, which settled disputes involving the termination rates for fixed traffic between roughly \$0.08 and roughly \$0.12 per minute, might reflect agreement on rates in excess of the \$0.19 benchmark rate. Beyond this charge, Access offers nothing to give rise to a “reasonable concern”<sup>2</sup> about lifting the ISP on the U.S.–Philippines route, as required by the Commission. In the ISP Reform Order, the Commission found that removing the ISP from benchmark compliant routes such as the U.S.–Philippines route would “simplify” the regulatory regime and would “serve the purpose of expanding the opportunity for flexible, commercial arrangements . . . to the benefit of . . . U.S. consumers.”<sup>3</sup> Prior to the lifting of ISP on benchmark-compliant routes, the Commission invited parties to raise “reasonable concerns” that the ISP should not be lifted on specific routes. Access has not met this standard.

Given the lack of any information to suggest that the ISP should not be lifted on this route and the lack of any concern expressed by other U.S. carriers – indeed, the support for doing so from AT&T, which had previously filed a whipsawing complaint against Philippine carriers – the Commission should remove the ISP from the U.S.–Philippines route expeditiously.

---

<sup>2</sup> *International Settlements Policy Reform; International Settlement Rates*, First Report and Order, 19 FCC Rcd 5709, 5724 (2004) (“ISP First Report and Order”).

<sup>3</sup> *Id.* at 5723.

**I. THERE IS NO BASIS TO CHALLENGE THE COMMISSION'S CONCLUSION THAT THE PHILIPPINES ROUTE IS BENCHMARK-COMPLIANT.**

Access does not even assert that any Philippines carrier is seeking to charge it termination rates in excess of the \$0.19 per minute benchmark rate. Instead, Access speculates that rates might be above benchmarks because interim agreements settling the termination rate dispute between U.S. and Philippines carriers have not been filed with the Commission. The speculation that rates may not be benchmark-compliant, however, is contradicted by that recent, and very public, dispute itself, and does not raise any reasonable concern that would warrant further proceedings, much less retaining the ISP.

The dispute in question<sup>4</sup> arose from efforts by Philippines carriers to raise termination rates from approximately \$0.08 per minute for termination on fixed networks to approximately \$0.12 for fixed networks.<sup>5</sup> Even the higher rates sought by Philippines carriers were well below the applicable benchmark rates of \$0.19 per minute. AT&T and MCI, the carriers that sought FCC relief from the proposed rate increases, have since negotiated interim agreements with the Philippines carriers.<sup>6</sup> It is meritless to suggest that AT&T and MCI would have

---

<sup>4</sup> See *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc., for Prevention of "Whipsawing" on the U.S.-Philippines Route*, Order on Review, IB Docket No. 03-38, FCC 04-112 (rel. June 4, 2004) ("*AT&T/MCI Order on Review*"); *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief and Petition of WorldCom, Inc., for Prevention of "Whipsawing" on the U.S.-Philippines Route*, Order, 18 FCC Rcd 3519 (2003) ("*Bureau Order*"; collectively, the "*AT&T/MCI Proceeding*").

<sup>5</sup> *AT&T/MCI Order on Review* at ¶6.

<sup>6</sup> *Id.* at ¶15.

settled their dispute with Philippines carriers at a rate for fixed traffic in excess of \$0.19 per minute, or that any other U.S. carrier would have agreed to pay such amounts. Access' groundless speculation that this might be the case does not give rise to any reasonable concern to the contrary.<sup>7</sup>

Further, neither AT&T nor MCI has suggested that the ISP continue to apply to the U.S.-Philippines route. Indeed, AT&T supports removal of the ISP on the U.S.-Philippines route,<sup>8</sup> and MCI is silent on this issue.<sup>9</sup> This is further evidence that current settlement rates are below benchmark.

## **II. ACCESS' COMPLAINT THAT U.S. CARRIERS SHOULD HAVE BEEN FORCED TO FILE THEIR INTERIM RATE AGREEMENTS WITH PHILIPPINE CARRIERS IS NOT GERMANE TO THIS PROCEEDING.**

The heart of Access' complaint appears to be that U.S. carriers have not filed their interim agreements with Philippine carriers.<sup>10</sup> Access has raised this issue before and the Commission found it to be without merit, as the Commission "does not require carriers to file interim agreements under the ISP."<sup>11</sup> In any event, any challenge by Access to the FCC's prior ruling should have been raised in the proceeding in which that ruling was made; it is not

---

<sup>7</sup> Notably, Access does not offer "an affidavit and relevant commercial agreements" – the evidence the Commission will require to support intervention on an ISP-exempt route, *see* ISP First Report and Order at 5762 (Final Rule § 64.1002(d)) – to support its contention that the U.S.-Philippines route should not be exempted from the ISP.

<sup>8</sup> *See* Comments of AT&T Corp. on Removal of the International Settlements Policy at 1, IB Docket Nos. 02-324 & 96-261 (filed June 28, 2004).

<sup>9</sup> MCI did not file comments in response to the Public Notice in this proceeding. *See Commission Announces Pleading Cycle for Comments and Replies in Proceeding on Routes Believed to be Benchmark-Compliant*, Public Notice, DA 04-1585 (rel. May 28, 2004).

<sup>10</sup> Access Comments at 3-5

<sup>11</sup> *AT&T/MCI Order on Review* at ¶2 n.9.

subject to challenge here. Further, there is no basis even to imagine that, if made public, those agreements would show termination rates in excess of benchmark rates, which is the matter at issue in this proceeding.

When it denied Access' request that the interim rate agreements be required to be filed, the Commission advised Access to raise any "more expansive competitive concerns" by availing itself of the "procedures highlighted in the" ISP First Report and Order.<sup>12</sup> Access has not followed the Commission's direction, attempting instead to recast this already-rejected complaint as somehow giving rise to a general competitive threat. But the very tortured line of Access' reasoning — that settlements of rate disputes between \$0.08 and \$0.12. might have yielded rates in excess of \$0.19 per minute — shows that Access' concern is baseless.

**III. ACCESS' EFFORT TO USE THE *AT&T/MCI PROCEEDING* AS LEVERAGE IN ACCESS' PRIVATE COMMERCIAL DISPUTE WITH PHILIPPINE CARRIERS SHOULD NOT BE REWARDED; ACCESS HAS RAISED NO REASONABLE CONCERN REGARDING THE LIFTING OF THE ISP.**

The Commission, even in ruling against the Philippine carriers in the *AT&T/MCI Proceeding*, made clear that it would lift the ISP from the U.S.-Philippines route in the absence of reasonable concerns being raised in this proceeding.<sup>13</sup> Thus, the *AT&T/MCI Proceeding* does not provide a basis for

---

<sup>12</sup> *Id.*

<sup>13</sup> *AT&T/MCI Order on Review* at ¶3.

maintaining the application of the ISP to the U.S.-Philippines route.<sup>14</sup> In any event, Access' recitation of the charges made in the *AT&T/MCI Proceeding* adds nothing to the record in this proceeding.

Access' vague and unsubstantiated charge of "discriminatory and anticompetitive behavior"<sup>15</sup> is equally unavailing, deriving, to the best of PLDT's knowledge, from a several-year old contract dispute between PLDT and Access. Access' attempt to try to turn a private commercial dispute with PLDT into a policy matter involving the entire U.S.-Philippines route should be disregarded.

Access has never, even after the filing of AT&T and MCI's "whipsawing" complaints, offered any comments relating to similar concerns.<sup>16</sup> Indeed, the only "evidence" Access submits of PLDT's alleged wrongful conduct is a letter from PLDT's counsel expressing PLDT's general willingness to negotiate non-discriminatory commercial termination rate arrangements with other U.S. carriers.<sup>17</sup> Access never even responded to this letter.

The Commission stated that, at the close of this comment period, it would lift the ISP as to listed countries, including the Philippines, in the absence of

---

<sup>14</sup> The fact that neither of the complaining carriers, AT&T and MCI, supports maintaining the application of the ISP to the Philippines further demonstrates that there is no need to do so.

<sup>15</sup> Access Comments at 2.


<sup>16</sup> When the Bureau first ruled in this proceeding, it invited any other U.S. carrier that had concerns to submit a report to the Bureau. *Bureau Order* at 3537 n.96. Access submitted no such report.

<sup>17</sup> Letter from Henry Goldberg, Counsel for PLDT, to Mitchell Brecher, Greenberg Traurig, LLP, (Feb. 24, 2004) (Attachment B to Access Comments).

reasonable concerns raised in the comments filed this proceeding.<sup>18</sup> Access has raised none. For the foregoing reasons, PLDT respectfully asks the Commission to lift the ISP on the U.S.-Philippines route.

Respectfully submitted,

PHILIPPINES LONG DISTANCE  
TELEPHONE COMPANY

By:   
Henry Goldberg  
Jonathan L. Wiener  
Brita D. Strandberg

Goldberg, Godles, Wiener  
& Wright  
1229 19<sup>th</sup> St., N.W.  
Washington, DC 20036  
(202) 429-4900 - Telephone  
(202) 429-4912 - Facsimile

Of counsel:

Margaret K. Pfeiffer  
Thomas R. Leuba

Sullivan & Cromwell LLP  
1701 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
(202) 956-7500 - Telephone  
(202) 293-6330 - Facsimile

July 13, 2004

---

<sup>18</sup> ISP First Report and Order at 5724.